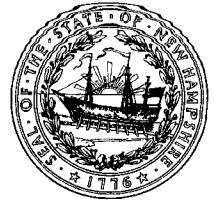




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Gregg Mandsager, City Manager
City of Lebanon
51 North Park Street
Lebanon, NH

Re: Wetlands Bureau File 2006-535
Lebanon Municipal Airport

ADMINISTRATIVE ORDER
BY CONSENT
No. WD 06-042

A. INTRODUCTION

This Administrative Order by Consent is issued by the Department of Environmental Services, Water Division to, and with the consent of, the City of Lebanon pursuant to RSA 482-A:6 and RSA 485-A:22. This Administrative Order by Consent is effective upon signature by both parties.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. The City of Lebanon is a duly-constituted municipality of the State of New Hampshire having a mailing address of 51 North Park Street, Lebanon, New Hampshire 03766.

C. STATEMENTS OF FACTS AND LAW

1. RSA 482-A authorizes DES to regulate dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I the Commissioner of DES has adopted Env-Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
3. RSA 482-A:14, III provides that "[f]ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A."
4. The City of Lebanon is the owner of property located on 5 Airpark Road, Lebanon, New Hampshire, more particularly identified on City of Lebanon Tax Map 131 as Lot 1 ("the Property").

5. On April 27, 2006, DES issued Wetlands and Non-Site Specific Permit 2006-0535 ("the Permit") to the City of Lebanon to dredge and fill 228,690 square feet (5.25 acres) of mixed palustrine forested and scrub shrub wetlands for airport expansion on the Property, pursuant RSA 482-A.

6. The Permit incorporates thirty-five (35) specific permit conditions. The thirty-five (35) specific permit conditions include in relevant part the following (numbers correlate to permit condition numbers on the Permit):

“

13. The Lebanon Municipal Airport shall determine feasible restoration opportunities within the City of Lebanon and submit details, in accordance with Part Wt 805, to the DES Wetlands Bureau for review prior to construction.
14. The information relative to the potential wetland restoration area(s) including landowner permission shall be submitted to the Wetlands Bureau no later than August 1, 2006.
15. The schedule for starting work at the identified wetland restoration area(s) shall coincide with site construction unless otherwise considered and authorized by the DES Wetlands Bureau.
16. The wetland restoration area(s) shall be properly constructed, landscaped, monitored and remedial actions taken that may be necessary to create functioning wetland areas. Remedial measures may include replanting, relocating plantings, removal of invasive species, changing soil composition and depth, changing the elevation of the wetland surface, and changing the hydrologic regime.
25. This permit is contingent upon the execution of a conservation easement on the proposed area depicted on plans received April 14, 2006.
26. As the Lebanon Conservation Commission is not an acceptable easement holder for the preservation parcel that is owned by the City, the applicant shall determine an easement holder by August 1, 2006 and, in accordance with Rule Wt 501.02(a)(6), provide a statement from the proposed holder indicating that the proposed holder will accept the easement, as identified by RSA 477:47.
27. If an easement holder for the proposed conservation parcel is not secured by August 1, 2006, the applicant shall provide an alternative mitigation proposal to be approved by the DES Wetlands Bureau which may include alternative conservation parcels.
28. Draft conservation easement language shall be submitted to the DES Wetlands Bureau and local Conservation Commission for review and approval.
29. The conservation easement to be placed on the preservation area(s) shall be written to run with land, and both existing and future property owners shall be subject to this easement.
30. The plan noting the conservation easement with a copy of the final easement language shall be recorded with the Registry of Deeds office for each appropriate lot. A copy of the recording from the County Registry of Deeds shall be submitted to the DES Wetlands Bureau.
31. The applicant shall prepare a report summarizing existing conditions within the conservation area. Said report shall contain photographic documentation of the easement area, and shall be submitted to the DES Wetlands Bureau and the grantee prior to construction to serve as a baseline for future monitoring of the easement area.
32. The conservation easement area(s) shall be surveyed by licensed surveyor, and marked by monuments [stakes] prior to construction.

33. The DES Wetlands Bureau shall be notified of the placement of the easement monuments to coordinate on-site review of their location."

7. On August 7, 2006, DES personnel met with an airport representative to discuss an extension of time of Condition 26 from August 1, 2006, to December 1, 2006.

8. On August 15, 2006, DES personnel spoke with the Lebanon City Manager, Gregg Mandsager, and explained that the permit appeal period had passed and the City was not in compliance with certain mitigation conditions under the Permit. On behalf of the City, Mr. Mandsager stated that he was willing to sign an Administrative Order by Consent to ensure future compliance with the required Permit conditions.

D. DETERMINATION OF VIOLATIONS

1. The City of Lebanon has violated RSA 482-A, by failing to meet the following Permit conditions: 13, 14, 15, 16, 25, 26, 27, 28, 29, 30, 31, 32, 33; pursuant to RSA 482-A:14, III.

E. ORDER

Based on the above findings, DES hereby orders the City of Lebanon, and the City of Lebanon agrees, to undertake and complete the following actions in accordance with the time schedules specified:

1. **By October 1, 2006**, comply with Permit conditions 13, 14, and 15 by submitting required items to DES for restoration/mitigation.
2. **By October 1, 2006**, comply with Permit conditions 25, 26, 27, 28, 29, 30, 31, 32 by submitted required items to DES for preservation/conservation easement mitigation.
3. **By August 1, 2007**, submit to DES evidence that the City has bonded or had an outside financial institution escrow \$150,000 for the purposes of carrying out restoration in the City of Lebanon.
4. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order by Consent, to DES as follows:

Gino Infascelli, Public Works and Highway Supervisor
DES Water Division
Wetlands Bureau
29 Hazen Drive - P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
e-mail: ginfascelli@des.state.nh.us

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F. CONSENT AND WAIVER OF APPEAL


1. By execution of this Administrative Order by Consent, the City of Lebanon agrees that this Order shall apply to and be binding upon the City of Lebanon, its officers, directors, successors and assigns and agrees that this Order may be entered and enforced by a court of competent jurisdiction.
2. By execution of this Administrative Order by Consent, the City of Lebanon waives any right to appeal this Administrative Order by Consent provided by statute, rule, or common law, including without limitation the right to appeal to the Wetlands Council, and waives any right to object to the entry and enforcement of this order by a court of competent jurisdiction.

G. OTHER PROVISIONS

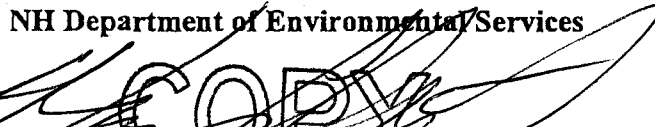
Please note that RSA 482-A provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. The City of Lebanon remains obligated to comply with all applicable requirements. DES will continue to monitor the City of Lebanon's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

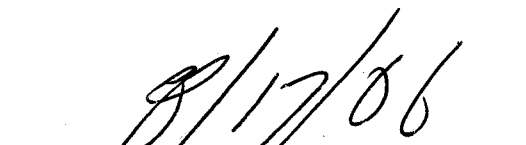
City of Lebanon


By: Gregg Mandsager, City Manager
Duly Authorized

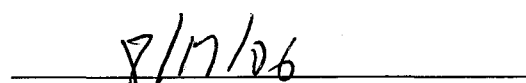

Date 8/16/06

NH Department of Environmental Services


Harry T. Stewart, P.E., Director
Water Division


Date 8/17/06


for Michael P. Nolin, Commissioner


Date 8/17/06

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cc: Gretchen Hamel, Legal Unit Administrator
Public Information Officer, DES PIP Office
Jennifer Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Gino Infascelli, DES Wetlands Bureau
Tracey Boisvert, DES Wetlands Bureau
Lebanon Conservation Commission
Steve Miller, Lebanon Municipal Airport Manager
Lebanon Airport Advisory Committee